(2) that his statement was not recorded in the form of alternate question and answer.

It is to be observed that prior to the decision in *Inder Singh's case*[2] there was no local authority on the construction of section 112(ii) of the F.M.S. Criminal Procedure Code, and the Court in that case referred to Indian authorities on section 161 of the Indian Criminal Procedure Code of 1882, which was exactly the same as section 112 of our F.M.S. Criminal Procedure Code, for guidance in the interpretation of that section. The Indian Courts, however, have not all been in agreement on the construction of this section of the Indian Criminal Procedure Code, and there is a flood of authority both ways. The learned trial Judge, in deciding as he did, preferred to follow the decision in the case of *Queen Empress v. Bhagwantia*[4]. In his judgment, at page 174, he said:—

"On appeal it was argued that the provision of law creating a legal obligation to state the truth must be strictly construed, and the case of Empress v. Baikanta Bauri[5], was cited.

It was there held that before a conviction can be sustained of making false statements to a police officer, it must be proved that such statements were made in answer to questions put to the accused by an investigating officer. This case, however, does not appear to have been followed in all the Indian Courts for, in the case of Queen Empress v. Bhagwantia[4], the Court held:—

'It is sufficient if such false statement is substantially an answer to one or more questions addressed to the witness before the statement is made.'

I prefer to follow the latter decision, and it is quite obvious in this case (the point not being raised in the Magistrate's Court) that the false statement which the appellant was alleged to have made was made in answer to one or more questions put to him by Mr. Elphinstone, and such questions he was legally bound to answer truly (section 112(ii) Criminal Procedure Code)."

On this, with the greatest respect, I have two observations to make. Firstly, the passage quoted by the learned Chief Justice in his judgment is taken from the headnote of the report and it does not appear anywhere in the judgment of Edge, C.J. and Tyrrell, J. In my view the headnote of the report, as so often happens, is misleading and does not accurately set out the decision of the Court. There, Edge, C.J. and Tyrrell, J. said at page 13:—

"The test as to whether a case comes within paragraph 2 of section 161 of the Code of Criminal Procedure, 1882, is — was a question put to the person by the police officer, and was what was stated by that person stated in answer to that question?"

Secondly, if the appellant had made in the police investigation a statement admitting that he had sent the anonymous letter to the police, and if the contents of that letter were not true, he would have exposed himself to a criminal charge for giving false information to the police. Accordingly, in my view, the appellant, in making what was found by the Magistrate to be a false statement, was protected by sub-section (ii) of section 112 of the F.M.S. Criminal Procedure Code which "allows a person not to answer truly any question which would expose him to a criminal charge". (See *Ramamoorthy v. Public Prosecutor*[6]). In my view, *Inder Singh's case*[2] was wrongly decided and should not be followed.

I respectfully agree with the decision in the case of *P. Kandiah v. Rex*[1]. I am of opinion that it was correctly decided. Thomson, J., although he expressed himself in different language, came, I think, to the same conclusion as the learned Chief Justice in *Kandiah's case*[1] in the case of *Beh Chai Eng v. Public Prosecutor*[7]. In that case he said at page 159:—

"That section (section 112 of the Criminal Procedure Code), it is to be noted, does not require a person interviewed by the Police in the course of a police investigation to make a statement the whole of which is true. It only compels him to give truthful answers to such questions as may be put to him.

In the present case the Prosecution have failed to prove that either of the statements contained in the charge were uttered by the appellant in reply to questions put to him. There is no evidence that any questions at all were put to him and though perhaps it might reasonably be inferred from the ordinary practice of the Police that some questions were put, there is no evidence whatsoever as to what these questions were or, in particular, as to whether the specific statements complained of were made in answer to questions. That being so, there was no evidence to shew that in making these statements the appellant was bound to state the truth and therefore he should not have been convicted."

On the authorities of *P. Kandiah v. Rex*[1] and *Beh Chai Eng v. Public Prosecutor*[7], by which the learned President was bound, and the facts being as they are, the respondent was, in my opinion, rightly acquitted.

For these reasons, this appeal must be dismissed.

Appeal dismissed.

Solicitors for the respondent: *Allen & Gledhill.*

In re Settlement of SHAIK SALLEH bin OBEID bin ABDAT & ANOR.; SHAIK AWAD bin MOBARAK bin MOHSIN bin ABDAT & ORS. v. SHAIK ALI bin SALLEH bin ABDAT.

[O. C. J. (Knight, J.) October 17, 1953]

[Singapore — Originating Summons No. 231 of 1952]

Settlement — Disqualification of beneficiaries — Validity of certain clauses in Settlement — Limitations or conditions — Charitable gift.

By a Settlement dated the 9th December, 1938 Shaik Salleh bin Obeid bin Abdat settled various immoveable properties in Singapore during a period until 21 years from the death of the last of a number of persons then alive. The income was as to one third to go to Wakaff and as to two thirds to various individual beneficiaries.

By paragraph 7 of the Settlement, after making provision for various special annuities the Settlor provided that the net income should be held for "those persons (other than any wives or wife of the Settlor) who at the date of the death of the Settlor shall be the heirs of the Settlor according to Mohammedan law and in the shares or proportions prescribed by such law." A proviso to paragraph 7 stated that upon the death of any such beneficiary his share should be paid to his heirs ascertained in accordance with Mohammedan law and in the shares prescribed by such law with similar further substitutional gifts of income. Paragraph 7 contained no express words of limitation on such gifts of income except those implicit in the gifts over contained in the proviso.

By paragraph 8 of the Settlement, it was provided: "The share in the net income to which each beneficiary (other than certain stated beneficiaries) entitled to receive the same (under the relevant clauses of paragraph 7) shall be entitled in possession shall be held upon the trusts following, that is to say:—

(a) Upon trust for the same beneficiary (hereinafter called "the principal beneficiary") during his or her life (but not exceeding the period of the Settlement) or until he or she (whether before or after the determination of any prior interest) shall —

(i) Change his or her religion, or

(ii) Without the written consent of the Trustees depart from, reside outside continue to reside outside the Hydramout, or

(iii) Attempt to set aside the provisions or any of the provisions of this Indenture, or

(iv) Do or suffer any act or thing or until any event happen whereby if such share of the net income were payable to him or her during his or her life or any less period absolutely he or she would be deprived of the right to receive the same or any part thereof

in any of which cases the trust of such share of the net income in favour of the principal beneficiary shall (but subject as hereinafter provided) absolutely fail and determine."

By paragraph 8(b) of the Settlement it was provided that if the Trusts of income in favour of any principal beneficiary should fail then the trustees should have a discretion as to the application thereof.

The gifts of income to Wakaff so far as relevant were in paragraphs 6(b)(i) and 6(b)(ii) of the Settlement and read as follows:—

"Upon Trust to hold the same as "Wakaff" and to pay and apply the same for the charitable purposes following, that is to say:

(i) For the maintenance and support of and for giving pecuniary or other aid or assistance to all such members of the kin and kindred and/or all such persons in any wise related to the Settlor or to his family as reside or shall reside in Alghurfah or elsewhere in the Hydramout and shall or may be in needy circumstances.

(ii) For the establishment endowment and carrying on or for assisting in the establishment endowment and carrying on (including building and repair or rebuilding) of Mosques Madarsahs and schools or other places of instruction or education religious or otherwise in Alhool and Alghurfah or elsewhere in the Hydramout and for the remuneration of persons employed or to be employed in any such institution."

The Settlement contained the following definition:—

" 'Wakaff' shall mean the permanent dedication to Allah of property for pious and for charitable purposes and for the purposes of this Indenture shall mean the permanent dedication to Allah of the net income or corpus and income of that part of the Settled Property hereinafter specified for the charitable purposes hereinafter more particularly mentioned."

The construction of the Settlement came before the Court to determine whether the conditions as to change of religion, change of residence or attempting to set aside provisions of the Settlement were valid or not and whether such provisions were by way of limitation or condition subsequent. It appeared that if such provisions were invalid and were limitations, the whole gift of income would be void, whereas if they were conditions subsequent, only the conditions would be void, in accordance with the decisions in Re Moore 39 Ch. D. 116 and Sifton v. Sifton[1].

The opinion of the Court was also required as to whether the conditions as to residence in paragraph 6 (b)(i) were void for uncertainty and whether the use of the words "places of instruction" in paragraph 6 (b)(ii) made such gifts non charitable.

On the construction of paragraph 8 of the Settlement,—

Held: the conditions as to change of religion or residence or attempting to set aside provisions of the Settlement are conditions subsequent and are void unless it is clearly known what are the exact circumstances which will cause the gift to be divested or determined.

On the trusts referred to in paragraph 6(b) of the Settlement, —

Held: the trusts are good charitable trusts in spite of the condition of residence referred to in paragraph 6(b)(ii) and the introduction of the words "other places of instruction."

Cases referred to:—

(1) *Sifton v. Sifton* (1938) A.C. 656.

(2) *Hodgson v. Halford* (1879), 11 Ch. D. 959.

(3) *In re Compton* (1945) Ch. 123.

(4) *In re Scarisbrick* (1951) Ch. 622.

As to change of religion and duty of parent to select his child's religion without fear of pecuniary penalties, the following cases were cited in argument: *Hodgson v. Halford*[2]; *Re May* (1917) 2 Ch. 126; *Re Borwick* (1933) Ch. 657; *Re Tegg* (1936) 2 All E.R. 878; *Re Allen* (1953) 3 W.L.R. 637; *Re W.* (1907) 2 Ch. 557; *Re Esther Lyons* 22 L.T. 770; *Ward v. Laverty* (1925) A.C. 101; *Re Maria Hertogh* (1951) M.L.J. 164.

As to limitations and conditions subsequent: *Sifton v. Sifton*[1]; *Re Moore* 39 Ch. D. 116; *Re Hewitt* (1926) Ch. 740; *Heath v. Lewis* 43 E.R. 374; *Meads v. Woods* 52 E.R. 331; *Re Lovell* (1920) 1 Ch. 122; *Hope Jonstone v. Hope Jonstone* (1904) 1 Ch. 470.

As to residence: *Sifton v. Sifton*[1]; *Re Coxen* (1948) 1 Ch. 747; *Re Field* (1950) 1 Ch. 520; *Re Gape* (1952) 1 All E.R. 827; *Re Allen* (1953) 3 W.L.R. 637; *Clavering v. Ellison* 11 E.R. 282.

As to attempting to set aside the settlement: *Re Wynn* (1952) 1 All E.R. 341; *Sterling v. Levingston* 21 E.R. 620.

As to Charities: *Attorney-General v. Price* 34 E.R. 143; *Re Hopkinson* (1949) 1 All E.R. 346; *Hunter v. Attorney-General* (1899) A.C. 309; *Re Coxen* (1948) 1 Ch. 747; *Fish v. Attorney-General* 4 Eq. 521; *In re Compton*[3]; *In re Scarisbrick*[4]; *Re Marr* (1936) Ch. 671.

ORIGINATING SUMMONS.

J. K. Gale for the trustees.

N. A. Mallal for the plaintiffs.

W. Munro for the defendant.

A. V. Winslow (Crown Counsel) for the Attorney-General.

Cur. Adv. Vult.

Knight, J. : — In this originating summons the trustees of a deed of settlement dated 9th December 1938 made by a settlor who died on February 10th 1939, have applied to the Court for the determination of certain issues arising from the deed — the wording of which as indicating the settlor's intention is, at times, remarkably obscure. By consent it was agreed that at this stage only prayers 1, 2, 3, 4, 17 and 19 of the summons should be dealt with and the interests of the many parties concerned have been grouped into four classes — Messrs. Mallal, Munro and Winslow for the would-be beneficiaries and Mr. Gale for the trustees. With the disposal of those prayers it is hoped that those remaining for consideration in the summons will be simplified and permit of ready construction.

A study of the settlement shows the settlor — like other rich men — to have been of obstinate and autocratic disposition tinged nevertheless, with kindly feelings towards his less fortunate brethren — provided always that they blindly and implicitly followed the course of conduct which he in his wisdom or folly predetermined for them. Thus in clause 8 of the settlement beneficiaries were disqualified if they changed their religion or resided outside a defined area of Arabia (without the trustees permission) or indeed if they should have the temerity to question the settlor's wishes by even attempting to set aside the provisions of the deed. It is the validity of these clauses with which, at the application of the trustees, I must deal together with the validity of certain charitable trusts which are contested by one class of beneficiaries.

Learned counsel have propounded most exhaustive and careful argument and have cited numerous authorities which have been of the very greatest assistance to me in reaching my conclusion in these matters and I am indeed grateful for this assistance. The point which, I must confess, gives me the greatest difficulty is whether clauses 8 (a) (i), (ii) and (iii) are limitations or conditions subsequent and as this decision is perhaps the most important being relevant, as it is, as to whether those clauses should be strictly construed or not, I propose to deal with it first.

For his class of beneficiaries Mr. Munro argues that Clauses 7 and 8 of the deed should be construed together — that the former merely defines the objects of the trusts, and the trusts themselves are defined in the latter — in short that the words "during his or her life" ..... "or until" appearing in Clause 8 (a) are merely formulae of limitation and not conditions subsequent. *Per contra,* Mr. Mallal urges that the gifts themselves are absolute under Clause 7 without the assistance of Clause 8 and that even should there be any doubt in the matter the Court (under *Sifton v. Sifton*[1]) should presume them to be conditions subsequent as it favours early vesting and strict proof. In his closing address Mr. Gale admitted that the word "until" connoted limitation yet felt that the gift might be absolute under Clause 7. At the same time he pointed out that it seems impossible to make an absolute gift of income and the matter was by no means free from doubt.

Not without hesitation, because the point is a difficult one, I think that Mr. Mallal's submissions should prevail. The terms of Clause 7 are unambiguous and, *inter alia,* direct the trustees to divide and pay certain shares between and to the persons entitled — thus vesting those interests, as I see it, in the beneficiaries concerned without recourse to Clause 8. Admittedly the beneficiary receives only income under the terms of Clause 7 but this is a beneficial interest under the settlement conveyed by way of absolute gift and it vests without assistance from or recourse to Clause 8. My conclusions in this regard are strengthened by the wording of the heading of Clause 8 ..... "provisions for forfeiture" — how can an unvested interest be forfeited? — and also the words "The share in the net income to which each beneficiary ..... entitled to receive the same ..... under paragraph 7 hereof ..... shall be entitled in possession". The last, admittedly is obscure but the wording clearly indicates to my mind an intention of the settlor that those beneficiaries received vested interests under Clause 7 and would only lose such interests if subsequently they disregarded certain conditions he imposed upon them.

In my opinion, therefore, paragraphs (a) (i) (ii) and (iii) of Clause 8 of the deed of settlement are conditions subsequent and by long established practice the Courts will hold such conditions void unless it is clearly known what are the exact circumstances which will cause the gift to be divested or determined.

To return to prayer 1 of the summons the settlement provided for a cessor of interest if a beneficiary should change his or her religion. Now how is such a change to take place? Is it necessary for a beneficiary to make a solemn declaration of change of religion? — an unlikely eventuality here — Can this be established by the evidence of others or by the fact that he does

not regularly attend at places appointed for worship? Again, does the clause refer to the religion of the beneficiary at the date of the settlement and what of the infant beneficiary who might be brought up in one religion by a guardian and change it on reaching maturity? I must point out that this case is in no way similar to *Hodgson v. Halford*[2] where there was provision against embracing a particular faith — my reason for finding this condition invalid is simply the practical impossibility of ascertaining whether in fact anyone ever had changed his religion. I thus answer prayer one of the summons in the affirmative.

Clause 8 (a) (ii) is similarly in my judgment void for uncertainty. For how long must a beneficiary "reside" outside the Hydramout before he is disqualified? Does "reside" mean "live"? Quite apart from these considerations, however, the case of *Sifton v. Sifton*[1] is exactly in point and the *in terrorem* doctrine in my opinion, would apply. Prayer 2 is thus answered in the affirmative.

Clause 8 (a) (iii) is even more uncertain and *in terrorem*. What, for example would be the position of a beneficiary who attempted to set aside a gift made by the trustees in error to a beneficiary who in fact was unentitled? Again, how can the trustees ascertain what is an "attempt" to set aside the provisions of the deed? Would a letter written by a solicitor on a beneficiary's instructions questioning the trustee's action amount to an attempt? Frankly I do not see where the line can be drawn and I answer prayer 3 in the affirmative.

This leaves for disposal simply the charitable trusts referred to in prayers 17 and 19 of the summons. As regards the former I should unhesitatingly have held it bad had the purpose apparent from the deed, not been charitable. Such trusts, however, may be interpreted with far greater leniency than ordinary trusts and the class of people who might benefit under this provision are almost without number when one appreciates that the "kin and kindred and/or all such persons in any wise related to the settlor or his family" are entitled to benefit under the settlement. Similarly as this is a charitable trust I do not think that the condition of residence in the Hydramout for the purpose of this clause is uncertain. What the settlor intended in this part of the deed was to make provision for his family's poor relations in Arabia by way of "Wakaf" and in effect he has gone much further than this by leaving the door open to persons "who are in any wise related" to him or to members of his family. This is not, as I see it, in the nature of a private or family benefaction but one which is open to a large section of the community. I would thus distinguish this case from *In re Compton*[3] where in any event the facts were different — as here, unlike there, it was not a condition that the beneficiaries be needy. The facts of this case are nearer to *In re Scarisbrick*[4]. I answer prayer No. 17 of the summons that this is a good charitable trust.

The remaining trusts in Clause 6 (b) I also hold to be good. Mr. Munro takes exception only to certain words in Clause 6 (b) (ii) and does not dispute the remaining sub-clauses. I do not think that Clause 6 (b) (ii) is bad for uncertainty. The Settlor intended to benefit certain schools in Arabia in which children were given both religious and ordinary education. I do not think that the introduction of the words "other places of instruction" — unhappy though no doubt, they are — suffice to make the clause bad for uncertainty. I thus hold all the trusts enumerated in Clause 6 (b) to be good charitable trusts.

Order accordingly.

Solicitors for the trustees: *Sisson & Delay.*
Solicitors for the plaintiffs: *Mallal & Namazie.*
Solicitors for the defendant: *Allen & Gledhill.*

KUNA SOCKALINGAM MUDALIAR v. YANG SARIPAH & ANOR.

**[C. A. (Wilson, Buhagiar and Good, JJ.)
October 24, 1953]**

[K.L. — F.M. Civil Appeal No. 21 of 1953]

Practice and Procedure — Civil Procedure Code, ss. 241, 343 and 344 — Judgment debtor summons — Whether process constitutes execution.

In 1941 the appellant obtained judgment against the two respondents and another for $4,703, interest and costs. In 1953 the appellant, having obtained leave to execute the decree against the two respondents, took out a judgment debtor summons under section 343 of the Civil Procedure Code.

The judgment debtor summons came on for hearing before the learned Chief Justice in the presence of the appellant and the second respondent. It did not appear that the first respondent was present but this was immaterial. At the hearing the second respondent produced an affidavit sworn by himself which purported to show that he had paid the appellant $5,500 in 1944, in full settlement of the decree and produced a receipt to that effect. It was recorded that the plaintiff admitted the receipt but said there was another case. The learned Chief Justice dismissed the summons with $200 costs to the second respondent.

Before the Court of Appeal it was argued by Mr. Edgar for the appellant:—

(1) that the learned Chief Justice should have given the appellant an opportunity to file an affidavit in reply to that of the second respondent;

(2) that the learned Chief Justice ought not to have accepted the affidavit, referred to above, as showing satisfaction of the decree;

(3) that the learned Chief Justice ought to have examined the second respondent under the provisions of section 344 of the Civil Procedure Code.

Held: (1) as the appellant was present at the hearing and there was no suggestion that he had asked for a postponement in order to file an affidavit in reply to that of the second respondent or that he had asked to